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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

VICTOR YOHEY, CHRIS TILLISCH,
individually and on behalf of themselves
and all other similarly situated,

Plaintiffs

v.

STOREY COUNTY FIRE PROTECTION
DISTRICT,

Defendant

CASE NO.:

PLAINTIFFS' COLLECTIVE ACTION COMPLAINT

INTRODUCTION

COME NOW Plaintiffs, by and through their counsel, and respectfully submit their complaint against Defendant Storey County Fire Protection District and state as follows:

PARTIES

1. Plaintiffs are current and/or former employees of Defendant Storey County Fire Protection District ("Defendant"). At all times material herein, Defendant has employed the Plaintiffs as fire protection personnel.

2. Plaintiffs bring this action as a collective action in accordance with 29 U.S.C. §216(b) of the Fair Labor Standards Act ("FLSA") against the Defendant on behalf of themselves and all

1 others similarly situated because of Defendant's unlawful deprivation of Plaintiffs' rights to overtime
2 compensation. Plaintiffs seek declaratory judgment under 28 U.S.C. § 2201 and compensation,
3 damages, equitable and other relief available under the FLSA, as amended, 29 U.S. C. § 201, *et seq.*

4 3. At all times material herein, Plaintiffs and all others similarly situated have been
5 "employees" within the meaning of the FLSA. 29 U.S.C. § 203(e)(1).

6 4. Plaintiffs have given written consent to be party-plaintiffs in this action, pursuant to
7 29 U.S.C. § 216(b). Such written consents are appended to this Collective Action Complaint as
8 Exhibit A.

9 5. Defendant is a political subdivision of the State of Nevada, and at all times material
10 herein, Defendant has been a "public agency" and "employer" within the meaning of the FLSA, 29
11 U.S.C. §§ 203(x), 203(d). Defendant employs or employed Plaintiffs and all others similarly situated
12 and is located within the State of Nevada. Defendant has a principal office and place of business
13 located at 145 North C Street, Virginia City, Nevada 89440.

14 JURISDICTION AND VENUE

15 6. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1331, this
16 action being brought under the FLSA and specifically pursuant to 29 U.S.C. § 216(b).

17 7. Venue is proper under 28 U.S.C. § 1391 because Defendant operates in this judicial
18 district, and within its unofficial Northern Division, and the events or omissions giving rise to the
19 claims stated herein occurred in this judicial district.

20 FACTUAL ALLEGATIONS

21 8. Plaintiffs re-allege, and incorporate by reference herein, paragraphs 1 through 7 of
22 this Complaint.

23 9. Since June 30, 2015, as well as before, Plaintiffs and all others similarly situated
24 have worked for the Defendant as firefighters, paramedics, emergency medical technicians, rescue
25 workers or ambulance personnel.

26 10. Since June 30, 2015, and continuing to date, while working for Defendant, Plaintiffs'
27 and all others' similarly situated primary job duties have been, and remain, to protect and serve the
28 public by engaging in fire suppression, emergency response and related non-exempt activities.

1 While on the scene of fire calls, the Plaintiffs and all others similarly situated, with their crew,
2 engage in the control, suppression, and extinguishment of fires and the rescue of fire or accident
3 victims, including the transport of victims to hospital, as necessary. Plaintiffs and all others similarly
4 situated also respond to emergency medical calls and transport patients to hospital, as necessary.

5 11. While working as firefighters, paramedics, emergency medical technicians, rescue
6 workers and ambulance personnel, Plaintiffs, as well as others similarly situated, are assigned to
7 work, and in fact do work, a regular and recurrent schedule of forty-eight (48) hours on-duty,
8 followed by ninety-six (96) hours off-duty. As a result, Plaintiffs and all others similarly situated
9 are suffered or permitted to perform at least forty-eight (48) or seventy-two (72) hours of regularly
10 scheduled work each week. Furthermore, this schedule results in Defendant suffering or permitting
11 Plaintiffs and all others similarly situated to perform at least one hundred and twenty (120) hours
12 of regularly scheduled work in two (2) of every three (3) fourteen (14)-day periods. In addition,
13 Plaintiffs and all others similarly situated works extra shifts, outside of their regular schedule.
14 Plaintiffs and all others similarly situated are therefore regularly assigned to work, and do work, in
15 excess of forty (40) hours per week, as well as in excess of fifty-three (53) hours per week, in excess
16 of one hundred and six (106) hours in a fourteen (14)-day period, and in excess of two hundred and
17 twelve (212) hours in a twenty-eight (28) day period.

18 12. Defendant, at all times material herein, misclassifies Plaintiffs and all others similarly
19 situated as "exempt" employees and unlawfully fails to pay any overtime premiums for overtime
20 work. Instead, Defendant pays Plaintiffs and all others similarly situated a static biweekly wage and,
21 for unscheduled shifts outside Plaintiffs' and all others' similarly situated regular schedule, a straight
22 hourly rate.

23 13. Defendant, at all times material herein, has failed to pay Plaintiffs and all others
24 similarly situated overtime premium pay at the rate of one and one-half times his/her regular rate of
25 pay when it suffers or permits them to work in excess of forty (40) hours in a week, in excess of
26 fifty-three (53) hours in a week, in excess of one hundred and six (106) hours in a fourteen (14)-day
27 period, or in excess of two hundred and twelve (212) hours in a twenty-eight (28) day period.

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14. Defendant, at all times material herein, has known and should have known that uncompensated overtime work was being performed by Plaintiffs and all others similarly situated, because of, for example, Defendant established policies and procedures, work schedules, and observations of Plaintiffs and all others similarly situated. Therefore, Defendant's actions in refusing to provide Plaintiffs and all others similarly situated the rights and protections provided under the FLSA are willful in that Defendant knew its pay practices with respect to its firefighters, paramedics, emergency medical technicians, rescue workers and ambulance personnel was prohibited by the FLSA or, at the very least, showed a reckless disregard for the FLSA.

COUNT I

15. Plaintiffs re-allege, and incorporate by reference herein, paragraphs 1 through 14 of this Complaint.

16. During the times that Plaintiffs and all others similarly situated have worked in excess of forty (40) hours in a work week, Defendant failed to provide them with the rights and protections provided under the FLSA, including overtime pay at the rate of one and one-half times their regular rates of pay for all hours worked in excess of the hourly standards set forth under 29 U.S.C. § 207(a).

17. By failing to pay the Plaintiffs and all others similarly situated the overtime pay required under the law, Defendant has violated and is continuing to violate the provisions of the FLSA in a manner that is unreasonable, willful, and in bad faith. As a result, at all times material herein, Plaintiffs and all others similarly situated have been unlawfully deprived of overtime compensation and other relief.

18. As a result of Defendant's willful, unreasonable, and bad faith violations of the FLSA, there have become due and owing to Plaintiffs, and all others similarly situated, an amount that has not yet been precisely determined. The employment and work records for Plaintiffs and all others similarly situated (including time and attendance records) are in the exclusive possession, custody, and control of Defendant and Plaintiffs are unable to state at this time the exact amount owing to them. Defendant is under the duty imposed under the FLSA, 29 U.S.C. § 211(c), and

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1 various other statutory and regulatory provisions, to maintain and preserve payroll and other
2 employment records with respect to Plaintiffs and all others similarly situated from which the
3 amount of Defendant's liability can be ascertained.

4 19. Pursuant to 29 U.S.C. § 216(b), Plaintiffs and all others similarly situated are entitled
5 to recover liquidated damages in an amount equal to their backpay damages for Defendant's failure
6 to pay overtime compensation.

7 20. Plaintiffs and all others similarly situated are entitled to recover attorneys' fees and
8 costs under 29 U.S.C. § 216(b).

9 COUNT II

10 **VIOLATION OF SECTION 207(k) OF THE FAIR LABOR STANDARDS ACT**

11 21. Plaintiffs re-allege, and incorporate by reference herein, paragraphs 1 through 20 of
12 this Complaint.

13 22. Under the U.S. Department of Labor's regulations applicable to fire fighters covered
14 under 29 U.S.C. § 207(k), (29 C.F.R. § 553.230), an employer must pay overtime compensation to
15 such employees at a rate not less than one and one-half times their regular rate of pay for hours of
16 work in excess of fifty-three (53) hours in a seven (7)-day work period, in excess of one hundred and
17 six (106) hours in a fourteen (14)-day work period, or in excess of two hundred and twelve (212)
18 hours in a maximum twenty-eight (28)-day work period (or in excess of a proportionate number of
19 hours for work periods between seven (7) and twenty-eight (28) days)).

20 23. During the times that Plaintiffs and all others similarly situated have worked in excess
21 of fifty-three (53) hours per work week, one hundred and six (106) hours per fourteen (14)-day
22 period, and two hundred and twelve (212) hours per twenty-eight (28)-day period, Defendant has
23 failed to provide them with the rights and protections provided under the FLSA, including overtime
24 pay at the rate of one and one-half times their regular rates of pay for all hours worked in excess of
25 the hourly standards set forth under 29 U.S.C. § 207(k) and 29 C.F.R. § 553.230.

26 24. By failing to pay the Plaintiffs and all others similarly situated the overtime pay
27 required under the law, Defendant has violated and is continuing to violate the provisions of the
28 FLSA in a manner that is unreasonable, willful, and in bad faith. As a result, at all times material

1 herein, Plaintiffs and all others similarly situated have been unlawfully deprived of overtime
2 compensation and other relief.

3 25. As a result of Defendant's willful, unreasonable, and bad faith violations of the
4 FLSA, there have become due and owing to Plaintiffs and all others similarly situated an amount that
5 has not yet been precisely determined. The employment and work records for Plaintiffs and all
6 others similarly situated (including time and attendance records) are in the exclusive possession,
7 custody, and control of Defendant and Plaintiffs are unable to state at this time the exact amount
8 owing to them. Defendant is under a duty imposed under the FLSA, 29 U.S.C. § 211(c), and
9 various other statutory and regulatory provisions, to maintain and preserve payroll and other
10 employment records with respect to Plaintiffs and all others similarly situated from which the
11 amount of Defendant's liability can be ascertained.

12 26. Pursuant to 29 U.S.C. § 216(b), Plaintiffs and all others similarly situated are entitled
13 to recover liquidated damages in an amount equal to their backpay damages for Defendant's failure
14 to pay overtime compensation.

15 27. Plaintiffs and all others similarly situated are entitled to recover attorneys' fees and
16 costs under 29 U.S.C. § 216(b)

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiffs, on their own behalf and on behalf of all others similarly situated
19 pray that this Court:

20 (a) Enter judgment declaring that the Defendant has willfully and wrongfully violated
21 its statutory obligations under federal law and deprived the Plaintiff and all others similarly situated
22 of his/her rights;

23 (b) Order a complete and accurate accounting of all unpaid compensation to which the
24 Plaintiffs and all others similarly situated are entitled;

25 (c) Award Plaintiffs and all others similarly situated compensatory relief in the form of
26 unpaid compensation and liquidated damages equal to their unpaid compensation;

27 (d) Award Plaintiffs and all others similarly situated interest on their unpaid
28 compensation;

1 (e) Award Plaintiffs and all others similarly situated their reasonable attorneys' fees to
2 be paid by the Defendant, and the costs and disbursements of this action; and

3 (f) Grant such other relief as may be just and proper.

4 DATED this 16th day of January, 2020.

5
6 DYER LAWRENCE, LLP

7
8 By: 

9 Thomas J. Donaldson
10 Nevada Bar No. 5283
11 Sue S. Matuska
12 Nevada Bar No. 6051

13 Attorneys for Plaintiffs
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EXHIBIT “A”

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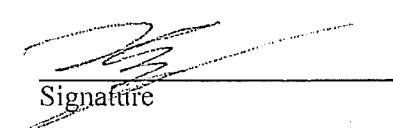
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CONSENT TO SUE

REQUEST TO BECOME PARTY-PLAINTIFF

I hereby consent to become a party-plaintiff in a lawsuit concerning my employment with Storey County, Nevada, as a fire protection personnel employee, to enforce my rights and recover overtime wages and other relief under the Fair Labor Standards Act.

Victor Yohey
Print Name Clearly


Signature

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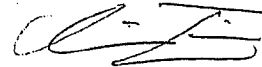
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I hereby consent to become a party-plaintiff in a lawsuit concerning my employment with Storey County, Nevada, as a fire protection personnel employee, to enforce my rights and recover overtime wages and other relief under the Fair Labor Standards Act.

Chris Tillisch

Print Name Clearly



Signature

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